

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 COSMO SPECIALTY FIBERS, INC., et
9 al.,

10 Plaintiffs,

11 v.

12 RICHARD BASSETT, et al.,

13 Defendants.

CASE NO. C15-5485 BHS

ORDER DENYING
DEFENDANTS' MOTION FOR
RECONSIDERATION

14 This matter comes before the Court on Defendants Richard Bassett and
15 Charlestown Investments Holdings, Ltd.'s ("Defendants") motion for reconsideration
16 (Dkt. 26). The Court has considered the pleadings filed in support of and in opposition to
17 the motion and the remainder of the file and hereby denies the motion for the reasons
18 stated herein.

19 **I. PROCEDURAL HISTORY**

20 On July 14, 2015, Plaintiffs Cosmo Specialty Fibers, Inc. ("Cosmo"), Cosmopolis
21 Holdings, LLC, Gores Capital Partners II, LP, and Gores Co-Invest Partnership II, LP
22

1 (collectively “Plaintiffs”) filed a complaint against Defendants asserting claims for
2 misrepresentation or fraud in the inducement, fraudulent concealment, negligent
3 misrepresentation, breach of contract, and a violation of Washington’s Consumer
4 Protection Act (“CPA”), RCW Chapter 19.86. Dkt. 1.

5 On August 5, 2015, Defendants filed a motion to dismiss. Dkt. 14. Defendants
6 argue that Plaintiffs’ claims are compulsory counterclaims that should have been brought
7 in *Cato Sales and Trading v. Cosmo Specialty Fibers, Inc.*, No. C14-5549BHS (W.D.
8 Wash.) (“*Cato v. Cosmo*”) and, in the alternative, Plaintiffs fail to state a claim for relief.
9 *Id.* On October 5, 2015, the Court granted the motion in part and denied the motion in
10 part. Dkt. 22. With respect to the compulsory counterclaims issue, the Court concluded
11 that Plaintiffs are separate legal entities than defendant in *Cato v. Cosmo*. *Id.* at 3–4. On
12 October 19, 2015, Defendants filed a motion for reconsideration as to the separate legal
13 entities conclusion. Dkt. 26. At the pretrial conference in *Cato v. Cosmo*, the Court
14 orally requested a response. On November 2, 2015, Plaintiffs responded. Dkt. 33.

15 II. DISCUSSION

16 Motions for reconsideration are governed by Local Rule CR 7(h), which provides
17 as follows:

18 Motions for reconsideration are disfavored. The court will ordinarily
19 deny such motions in the absence of a showing of manifest error in the
prior ruling or a showing of new facts or legal authority which could not
have been brought to its attention earlier with reasonable diligence.

20 Local Rules, W.D. Wash. LCR 7(h)(1).

1 In this case, Defendants argue that they have new evidence and that the Court
2 committed manifest error. With regard to the former, Defendants' new evidence fails to
3 show identity of the parties. Defendants cite to pretrial statements and jury instructions
4 in the *Cato v. Cosmo* matter for the proposition that the parties are "effectively one and
5 the same." Dkt. 26 at 4. Defendants, however, fail to show how the assertion of an
6 affirmative defense allows the Court to disregard the corporate form in a separate action.
7 Therefore, the Court concludes that Defendants' new evidence is without merit.

8 With regard to the alleged manifest error, Defendants fail to establish that the
9 Court's conclusion was erroneous. The Court recognizes Defendants' position that some
10 courts have disregarded the corporate form in certain, specific situations. *See, e.g.*,
11 *Transamerica Occidental Life Ins. Co. v. Aviation Office of Am., Inc.*, 292 F.3d 384, 386
12 (3d Cir. 2002) (claims against parent company should have been brought in action against
13 member company). Defendants have failed to show that this is an unusual situation in
14 which the corporate form should be disregarded. It is undisputed that the cases involve
15 separate contracts; this case involves a consulting agreement while the other case
16 involves an agency agreement. While this complaint mentions the agency agreement, it
17 is not a suit for "breach of the **same contract**." Dkt. 26 at 7. In any event, Plaintiffs
18 make a very persuasive argument that dismissal is not the appropriate remedy when the
19 companion case is still ongoing. *See* Dkt. 33 at 7–9 (compulsory counterclaims cannot be
20 asserted in a second, separate action after *conclusion* of the first).

III. ORDER

2 Therefore, it is hereby **ORDERED** that Defendants' motion for reconsideration
3 (Dkt. 26) is **DENIED**.

Dated this 24th day of November, 2015.



BENJAMIN H. SETTLE
United States District Judge